is to be observed that these warrants did not have an important attribute which is possessed by all bills of lading. This attribute is one which enables bills of lading to be transferred by one person to another, conferring upon the transferee a right of property which entitles the transferee to maintain an action for the delivery of the goods specified in the bills of lading or their value. The nature of a warrant being thus essentially different from that of a bill of lading, no assistance can, in my view, be derived from the case of the *Marquess of Bute* v. *Barclays Bank Ltd, supra.*

As to the argument put forward by counsel for the Bank of China to the effect that the plaintiffs are not entitled to sue the defendants because the bills of lading were received by the plaintiffs after the goods had been delivered to Hong Lian Trading Co. Ltd., it is relevant to refer to *Bristol and West of England Bank* v. *Midland Railway Co.* [3] the headnote of which reads as follows:

"In an action for wrongfully depriving the plaintiffs of goods, it appeared that the goods had been consigned to England from a colony. The bills of lading provided that the goods were to be delivered to the order of the consignor or his assigns. The consignor drew bills of exchange on the consignee against the consignment, and sold the bills of exchange, with the bills of lading annexed, which he had indorsed in blank, to a colonial bank, who sent them to a bank in London, with a hypothecation note empowering the London bank to sell the goods if the bills of exchange were not accepted or not paid at maturity. The goods arrived in England, and were delivered to the defendants, who were a railway company, to be delivered to the order of the shipowners. The consignee paid the freight and other shipping charges and accepted the bills of exchange, but before the bills became due, he induced the defendants wrongfully to deliver the goods to him without producing a delivery order from the shipowners. When the bills became due the consignee requested the plaintiffs to advance the money and take up the bills. They did so, and received the bills of exchange and the bills of lading from the London bank, and ultimately obtained delivery orders from the shipowners in exchange for the bills of lading. When they presented the delivery orders to the defendants they found that the goods had been already given up to the consignee, and they thereupon commenced the present action:—

Held, first, that the plaintiffs must be taken to be pledgees of the goods, and had therefore a property sufficient to entitle them to maintain the action independently of the Bills of Lading Act. Secondly, that the plaintiffs' right of action was not affected by the fact that at the date of the wrongful delivery they had not acquired their title to the goods."

Applying the principles laid down in this case, I have reached the conclusion that the plaintiffs' right of action is not affected by the fact that at the date of the wrongful delivery of the goods to Hong Lian Trading Co. Ltd. the bills of lading had not yet been transferred to the plaintiffs. In my opinion, the plaintiffs are entitled to succeed in their claim against the defendants in respect of the goods specified in the two bills of lading. There must be judgment for the plaintiffs for the further sum of $366,219.29 with costs. Judgment having already been given for the plaintiffs for the sum of $779,790.82, the total amount of the damages awarded is $1,146,010.11 with costs against the defendants.

Judgment for the plaintiffs.

Solicitors: *Tan, Rajah & Cheah; M. B. Brash; Laycock & Ong.*

KEW MAN CO. LTD. v. CHEAH YEE ENG & ANOR.

[A.C.J. (Suffian J.) January 19, 1963]

[Alor Star — Civil Appeal No. 4 of 1962]

Landlord and Tenant — Reservation of rent — Whether tenant or licensee — Intention to enter into formal legal relationship — Control of Rent Ordinance, 1956.

The defendant-respondent built a house soon after the Japanese surrender on an estate with the then owner's permission. In the lower court it was found that the house was subject to the Control of Rent Ordinance, 1956 and that the defendant was allowed to occupy the ground on which the house stood rent free because of his service to the estate as a contractor. The plaintiff-appellant's case was that the defendant-respondent is a mere licensee and his licence having been determined the plaintiff was entitled to possession. The learned President rejected the plaintiff's claim on the ground that there was a relationship of landlord and tenant and the tenant was protected by the Control of Rent Ordinance. The plaintiff appealed,

Held: (1) whether or not the parties intended to create as between themselves the relationship of landlord and tenant, under which an estate is created in the tenant and certain mutual obligations arise by implication of law, must in the last resort be a question of intention;

(2) there was no evidence that a tenancy between the original owner of the estate and the defendant could be inferred as at the time the house was built it was to the mutual advantage of both parties that he should be readily available on the estate;

(3) the defendant's licence having been properly terminated the plaintiff was entitled to vacant possession.

Cases referred to:—

(1) *Booker* v. *Palmer* [1942] 2 All E.R. 674.

(2) *Kuppu* v. *Brown & Anor.* [1960] M.L.J. 59.

(3) *Tool Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.* [1955] 2 All E.R. 657.

(4) *Saraswathy Ammal & Anor.* v. *Oriental Bank of Malaya Ltd.* [1960] M.L.J. 8.

Dadhi Ral Rado v. *Mukat Rai* [1958] M.L.J. 193 was also cited in argument.

CIVIL APPEAL.

Lim Cheng Poh for the appellant.

M. Abraham for the respondents.

Cur. Adv. Vult.

Suffian J.: This is a consolidation of two appeals from the decision of the learned President of the Sessions Court, Sungei Patani, in two separate actions No. 3 and No. 4 of 1961.

In each case the plaintiff is the same, namely the Kew Man Company Ltd.

The facts in action No. 3 are as follows. The defendant built a house on the Kuala Muda Estate with the then owner's permission. The chief clerk of the plaintiff, the present owner, said that the house was built during the state of emergency which we all know was declared on 12th July, 1948, G.N. 1921 of 1948, (therefore by inference after 31st January, 1948 and its occupant is not protected by the Control of Rent Ordinance No. 2 of 1956) but under cross-examination he said that it was built in 1946 or 1947. The defendant said that it was built in March 1946. The learned President wrote his grounds on the basis that the house was subject to the Ordinance and I proceed on the assumption that he had made a definite finding of fact that the house had not been completed after 31st January, 1948 and is therefore subject to the Ordinance.

The defendant was 13 in 1946 but nevertheless the learned President accepted his story that as he was a contractor working for the estate, he was allowed to occupy the ground on which stood the house rent free (there was no dispute that he was not asked to pay rent and he paid no rent) and he was exempted from paying rent because of his service to the estate as a contractor.

The plaintiff's case is that the defendant is a mere licensee and his licence having been terminated by two notices he the plaintiff is entitled to possession.

The learned President rejected the plaintiff's claim on the ground that there was a relationship of landlord and tenant and the tenant is protected by the Ordinance.

On consideration of this matter I must allow this appeal.

It is true that the reservation of rent is not essential to a tenancy, note (c) on page 407 of *Halsbury's Laws*, 3rd edition, volume 23, but nevertheless it has to be decided whether there was any evidence here upon which a tenancy between the original owner of the estate and the defendant could be inferred. In my opinion there was no such evidence. Whether or not parties intend to create as between themselves the relationship of landlord and tenant, under which an estate is created in the tenant and certain mutual obligations arise by implication of law, must in the last resort be a question of intention. Where the parties enter into a formal document the intention to enter into a formal legal relationship is obvious. But there is one golden rule which is of very general application, namely, that the law does not impute intention to enter into legal relationships where the circumstances and the conduct of the parties negative any intention of the kind, *Booker* v. *Palmer* [1]. Here this mere boy was soon after the Japanese surrender permitted to build on the estate where he was then or later became a contractor and he was not asked to pay rent. No doubt it was to the mutual advantage of both parties that he should be readily available when required particularly at a time when estate owners were anxious to rehabilitate their property after the neglect of the war years. In these circumstances I do not think that it would be proper to infer that the intention of the parties was to create the relationship of landlord and tenant. The facts in favour of the alleged tenant in *Kuppu* v. *Brown & Anor.* [2] are stronger than the facts here and yet there the Court of Appeal held that he was only a licensee.

True that in the first notice served on the defendant the plaintiff described the relationship between him and the defendant as one of "ground tenancy" but this does not in my view estop the plaintiff from offering the explanation that the defendant is only a licensee, see *Kuppu's* case [2] again.

Service of the summons and statement of claim in the Sessions Court is in itself a notice of termination of the licence, *Tool Manufacturing Co. Ltd.* v. *Tungsten Electric Co. Ltd.* [3] and *Saraswathy Ammal and another* v. *Oriental Bank of Malaya Ltd.* [4]

The defendant's licence having been properly terminated, the plaintiff is entitled to vacant possession.

The facts in action No. 4 are identical except that the defendant was a mature adult when he built his house on the estate. He also was a contractor for the estate and was permitted to build and built on the estate, he was not asked to pay rent and he paid no rent. Here too in my opinion the defendant was only a mere licensee and his licence having been properly terminated there shall be judgment for the plaintiff.

In both cases the defendants shall give up to the plaintiff possession of that portion of the land on which each of their houses stands and they shall pay costs in the Court below and here.

Judgment for the plaintiff.

Solicitors: *Pillai, Lim, Lee & Hwang; M. Abraham.*

TAM & ANOR. v. WATEH

[O.C.J. (Suffian J.) January 19, 1963]

[Alor Star — Civil Suit No. 98 of 1961]

Probate and Administration — Grant of letters of administration to defendant as lawful grandson — Objections by plaintiffs — Defendant obtaining ex parte order for distributing deceased's property — Whether plaintiffs can re-open question of defendant's status — Application for revocation of grant of letters of administration — Whether law in Kedah same as English law — Kedah Administration of Estates Enactment No. 1, s.18(iv).

Evidence — Grant of letters of administration whether conclusive evidence as regards character of administrator — Evidence of person who has special means of knowledge of relationship of two persons — Evidence Ordinance, ss.32(e), 41(2), 50(1).